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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,166	04/16/2004	Warren J. Grosjean		8278

7590 08/04/2005

WARREN J. GROSJEAN  
32 JUNIPER RD.  
WAYNE, NJ 07470-6156

EXAMINER
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LEE, JONG SUK

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/825,166

Applicant(s)

GROSJEAN, WARREN J.

Examiner

Jong-Suk (James) Lee

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 29, 2005 has been entered.
2. The amendment filed June 29, 2005 has been entered.

### *Specification*

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a plurality of transverse, **flexible hollow plastic tubes**" in claim 10, lines 6-7.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher (US 4,481,242) in view of DeGarie (US 6,357,964).

Fletcher discloses an aquatic weed barrier comprising a method and apparatus comprising a strip of plastic films having a plurality of gas release ports (26, 28) which may be slit or holes (see Figs. 4-9) angled or longitudinally arranged on the plastic film in a ditch/irrigation channel (27) and a transverse hold down means/heavy ballast/rocks (32, 33) attached/positioned thereon and the plastic strip is located longitudinally, the polymeric/plastic film having an inherent toughness for withstanding the abrasive action of water and rocks (see Figs. 1-11; col.2, lines 53-68; col.3, lines 1-13).

However, Fletcher fails to disclose or fairly suggest tubes as the hold down means filled with heavy materials. DeGarie discloses a drainage system with membrane cover for covering the reservoir having a cover (22) with a plurality of weights, which is tubular hollow shaped (32, 34) and flexibly connected each other (as seen in Fig. 1) to hold down the plastic cover (see Figs 1-2; col.1, lines 31-33; col.4, lines 8-54).

Therefore, in view of DeGarie et al, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to replace the hold-down means with the tubular shaped weight in order to hold the tubular weight together with side-by-side relationship for equal distribution of the holding weight.

With respect to the dimension of the plastic strip and the distance for the placement of the strip, an artisan within the ordinary skill in the art would have decided the dimension and positioning distance for the strip of plastic in order to effectively cover the desired area to be treated.

With respect to the specific gravity of the polymeric material, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide one or less than the water specific gravity by controlling the dimensions, such as thickness, of the plastic and further changing the characteristics of the plastic material in manufacture.

With respect to the filler material for filling the hollow tubes, such as sand, cement or aggregate, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to fill the hollow tubular weight of DeGarie with such a conventional heavy fill material in order to enhance the stability of the cover under the weather inclement.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

However, with respect to the argument that Fletcher's hold down means, such as rocks, are not attached to the plastic strip, the rocks of Fletcher may be considered to be "attached" insofar as the rock has a contact with the surface of the plastic strip.

#### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (571) 272-7044. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford, can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jjl  
July 29, 2005



**Jong-Suk (James) Lee**  
**Primary Examiner**  
**Art Unit 3673**